REMARKS/ARGUMENTS

Reconsideration of the current patent application is respectfully requested.

With respect to pending claims 1-3, 6-9, 12-15, 17-20 and 22, all were rejected. All claims 1-3, 6-9, 12-15, 17-20 and 22 were rejected under 35 U.S.C. §103(a) for obviousness over U.S. Patent No. 5,903,385, which issued May 11, 1999 to Y. Sugaya *et al.* in view of newly cited U.S. Patent No. 5,815,299, which issued September 29, 1998 to D. Bayart *et al.*

With respect to independent claims 1, 7, 13 and 18, the Examiner stated:

"Regarding claims 1, 7, 13 and 18, referring to Figures 6, 7, 9 and 12, Sugaya discloses an optical power control system configured for use with a wavelength division demultiplexer, the optical power control system comprising:

"a plurality of photodetectors...

"a control system...

"wherein the control system (i.e., control circuit 44 and pump 45, figs. 6, 7 and 12 sets a gain of the optical amplification system such that a power level indication based on the output powers monitored by the plurality of photodetectors is set within a desired range (see from col. 6, line 55 through col. 10, line 30).

"Sugaya differs from claims 1, 7, 13, and 18 in that he fails to teach an optical filter and control a tilt of the optical filter and set a tilt of the optical filter such that a difference in the monitored output powers is reduced. However, Bayart in US Patent No. 5,815,299 teaches an optical filter and control a tilt of the optical filter and set a tilt of the optical filter such that a difference in the monitored output powers is reduced (see Fig. 2, col. 4, lines 1-67, col. 5, lines 1-67, col. 6, lines 1-67, col. 7, lines 1-24). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the optical filter and control a tilt of the optical filter and set a tilt of the optical filter such that a difference in the monitored output powers is reduced as taught by Bayart in the system Sugaya. One of ordinary skill in the art would have been motivated to do this since Bayart suggests in column 4, lines 1-67, col. 5, lines 1-

67, col. 6, lines 1-67, col. 7, lines 1-24 that using such an optical filter and control a tilt of the optical filter and set a tilt of the optical filter such that a difference in the monitored output powers is reduced had advantage of allowing compensating for amplifier gain tilt and assuring that all optical channel remain within the dynamic range of the photodetectors and to increase the receiver sensitivity and the bit error rate."

The applicants respectfully disagree. The purported combination of the Sugaya and Bayart references can only be viewed an improper assemblage of *ad hoc* elements for the rejection of the applicants' claims. MPEP §2143 requires that "there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings." In contrast, to the system of the cited Sugaya patent, the Examiner would add the optical filter and control of Bayart *et al.* because "a difference in the monitored powers is reduced." However, as cited by the Examiner, the Sugaya system has already done this. "When the control circuit 44 receives the branched portions of the signal light components ch 1 to ch n, the control circuit 44 controls the output power of the light source 45 so as to equalize the light levels of ch 1 to ch n". Col. 7, lines 23-26. Why one would add the elements from the Bayart reference, as selected by the Examiner, into the Sugaya system to perform a function already achieved by the Sugaya system is unexplained. There is no motivation or suggestion to make the combination suggested by the Examiner.

Therefore, independent claims 1, 7, 13 and 18 are not obvious over the combination of the cited Sugaya and Bayart patents, and should be allowable.

Remaining claims 2-3, 6, 8-9, 12, 14-15, 17, 19-20 and 22 should be allowable for at least being dependent upon allowable base claims. Furthermore, at least some, if not all, of these claims are allowable in their own right. For example, claims 6, 12, 17 and 22 recite that "said control system sets a tilt of said optical filter to reduce a difference in monitored output powers for a highest WDM channel and a lowest WDM channel," or have similar language. In rejecting these claims, the Examiner stated:

> "Regarding claims 6, 12, 17 and 22, the combination of Sugaya and Bayart teaches the gain control system sets a tilt of said tilt control filter to reduce a difference in monitored output powers for a highest WDM channel and a lowest WDM channel (Fig. 2 of Bayart, col. 4, lines 1-67, col. 5, lines 1-67, col. 6, lines 1-67, col. 7, lines 1-24)."

The applicants have perused the lengthy portions of the Bayart patent cited by the Examiner and find no such teaching. If there is such a teaching, the Examiner is requested to cite it with specificity.

On the other hand, the applicants did find a description of the operation of the Bayart apparatus as follows:

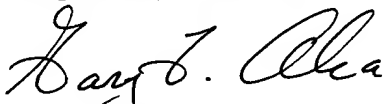
> "When the control logic 20 determines which channel of a received signal has the lowest power level, it also determines the difference Δp between this lowest level and an average power level Pavg obtained from the power levels of the other channels. It then controls the filters 16a through 16n of the optical attenuator 5 so that each of them introduces an attenuation corresponding to the value of the difference Δp determined in this way into the n-1 channels other than that with the lowest power level of the optical frequency division multiplexed signal propagated by the optical attenuator device to the point J on the optical link 2A for onward transmission." Col. 6, lines 56-67.

This is not what the applicants claimed. As the applicants understand the described operation, Bayart *et al.* set the tilt of the attenuator 5 by first determining the difference Δp from the lowest power level channel and the average power level of the other n-1 channels. Then these other n-1 channels are attenuated by Δp. On the other hand, the applicants' claimed invention simply "sets a tilt of said optical filter to reduce a difference in monitored output powers for a highest WDM channel and a lowest WDM channel." Hence it is evident that the Bayart patent does not teach the invention recited in claims 6, 12, 17 and 22.

Hence independent claims 1, 7, 13 and 18 and dependent claims 2-3, 6, 8-9, 12, 14-15, 17, 19-20 and 22 are all allowable.

Therefore, in view of the remarks above, the applicants respectfully request that the rejections be withdrawn, that claims 1-3, 6-9, 12-15, 17-20 and 22 be allowed, and the case be passed to issue. If a telephone conference would expedite the prosecution of the application in any way, the undersigned attorney asks that the Examiner call the undersigned at (408) 446-7687.

Respectfully submitted,



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